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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,821	09/01/1999	MICHAEL J. WARING	CV0244	5635

7590

11/29/2002

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EXAMINER

GHALI, ISIS A D

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/341,821

Applicant(s)

Waring et al.

Examiner

Isis Ghali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 12, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-10, 13-15, and 17-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10, 13-15, and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

The receipt is acknowledged of applicants' request for extension of time and notice of appeal, both filed 7/16/2002; and request under 1.114, filed 9/12/2002.

Claims 1-6, 8-10, 13-15, 17-20 are pending in the application and status of the claims are as follows:

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/12/2002 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-6, 8, 10, 13, 14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 560 014 ('014) in view of EP 666 081 ('081).

EP '014 discloses a spray apparatus includes a vessel with a dispensing means which can be a valve and nozzle mechanism or collapsible vessel with tube, or aerosol propellant and it contains a composition which can be administered to the skin, mucous membrane of the mouth and the nose (sinuses), tissue injury (wound), or body cavity (sinuses). The composition contains polyethylene glycol, propylene glycol and water (wound gel disclosed by the applicants). See the abstract; col.5, lines 4-6; col.14, lines 24-35; col.17, lines 25-27; col.22, line 52; col.23, line 8.

The reference does not teach the same composition as disclosed by applicant.

EP '081 teaches gel wound dressing comprising material comprising :

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- a) from about 0.05% to 10% by weight of natural gelling agent;
- b) from about 1.0% to 10% by weight of hydrocolloid;
- c) from about 5.0% to 30.0% by weight of an alkylene glycol and
- d) at least 50% by weight of water.

The wound dressing is packaged and sterilized. The gel composition of the reference can be extruded in the form of gel through a nozzle. See page 2, lines 20-24; page 3, lines 14-18. The gel of the reference has viscosity of 50-800 Pas.

Thus it would have been obvious to one having ordinary skill in the art at the time of the invention to replace the composition of EP '014 in the aerosol vessel that used to treat sinus wound by the composition disclosed by EP '081, motivated by the teaching of EP '081 that the gel composition has a viscosity that reduces the flow of the gel from the wound site and it can be extruded from a nozzle, with reasonable expectation of success of the derived gel from an aerosol as a wound dressing.

4. Claims 9, 15, 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '014 in view of EP '081 as applied to claims 1-6, 8, 10, 13, 14, and 20 above, and further in view of US 5,059,187.

EP '014 and EP '081 in combination do not teach a method of making the aerosol vessel.

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US '187 teaches a method for providing an aerosol container and method for cleaning the wound including introducing the wound cleaning solution through an opening into a pouch and then the opening is closed by a valve, the container is then sterilized and the propellant is introduced into the can. See the abstract; col.3, lines 1-10; col.5, lines 8-21.

Accordingly, it would have been obvious for one having ordinary skill in the art at the time of the invention to include the gel for treating wound as disclosed by EP '014 in view of EP '981 in the aerosol vessel of US '187, motivated by the teaching of US '187 that the rigid container of the aerosol is adapted to withstand a high pressure (col.2, lines 18-21), with reasonable expectation of success of treating wounds by delivering gel composition from an aerosol vessel.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Isis Ghali whose telephone number is (703) 305-4048. The examiner can normally be reached on Monday-Friday from 7:00 to 5:30 Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Isis Ghali

Patent Examiner

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600